

## **Assembly Bill No. 1172**

### **CHAPTER 724**

An act to amend Section 641 of the Code of Civil Procedure, to amend Sections 39, 250, 1000, 1060, 1061, 1063, 1064, 1890, 2356.5, 8226, 17200, 17203, 20123, 20223, and 21350 of, to add Sections 1460.1, 16060.5, 16061.5, 16061.7, and 16061.8 to, to add Part 3 (commencing with Section 1300) to Division 3 of, to add Part 6 (commencing with Section 21600) to Division 11 of, to repeal and add Section 16063 of, and to repeal Sections 2312, 3024, 4948, 8406, 17207, and 19028 of, to repeal Chapter 11 (commencing with Section 2750) of Part 4 of Division 4, to repeal Chapter 5 (commencing with Section 6560) of Division 6, and to repeal Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7, of the Probate Code, and to amend Sections 10850, 14100.2, 15610.30, and 15657 of the Welfare and Institutions Code, relating to estate planning, trusts, and probate.

[Approved by Governor October 6, 1997. Filed  
with Secretary of State October 7, 1997.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1172, Kaloogian. Estates and trusts.

(1) Existing law authorizes the appointment of referees, as specified, to try any or all issues in a civil action or proceeding, whether of fact or law, and to report a statement of decision thereon or to ascertain a fact necessary to enable a court to determine an action or proceeding. Existing law provides specified grounds upon which a party may object to the appointment of a referee, including the ground that the person does not meet statutory qualifications to be a juror.

This bill would provide an exception to this ground if the statutory qualifications require the referee to be a resident of a particular county in the state.

(2) Existing law defines a fiduciary for purposes of the Probate Code to mean a personal representative, guardian, conservator, or other legal representative.

This bill would revise this definition to mean prescribed persons who are legal representatives subject to the Probate Code.

(3) Existing law establishes the right to a hearing and notice regarding various actions under the Probate Code.

This bill would provide for an evidentiary hearing, upon request, on any contested issue of fact in any matter under the code and would provide that no notice is required to be given to children under 12 if one of 2 specified conditions is met.

(4) Existing law generally regulates accounts to be filed with a court.

This bill would revise these regulatory provisions, as specified.

(5) Existing law requires any request for a court order to give a conservator the power to consent to medical treatment to be accompanied by a declaration by a licensed physician or psychologist within the scope of his or her practice.

This bill would revise this provision to instead prohibit the court order from being issued unless accompanied by this declaration.

(6) Existing law establishes the right to appeal the making or denial of various orders or judgments specified in the Probate Code.

This bill would revise and recast these provisions, as specified.

(7) Existing law prohibits the issuance of letters of guardianship or conservatorship before a copy of the court order appointing the guardian or conservator is mailed to the ward if 14 years of age or older.

This bill would repeal this provision.

(8) Existing law provides, with specified exceptions, that if a testator fails to provide in his or her will for a surviving spouse who married the testator after the execution of the will, the omitted spouse is required to receive one-half of the testator's community and quasi-community property and a share of the separate property of the testator equal in value to that which the spouse would have received if the testator had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate.

Existing law provides that if a testator fails to provide in his or her will for his or her child born or adopted after the execution of the will, the omitted child is required to receive a share in the estate equal in value to that which the child would have received if the testator had died intestate, except as specified.

This bill would revise and recast these provisions to provide that if a decedent fails to provide by a testamentary instrument for his or her child born or adopted after the execution of all the decedent's testamentary instruments, the omitted child is required to receive a share in the decedent's estate equal in value to that which the child would have received if the decedent had died intestate and had not executed a testamentary instrument, except as specified.

This bill would also provide that if a decedent fails to provide by testamentary instrument for his or her surviving spouse who married the decedent after the execution of all the decedent's testamentary instruments, the omitted spouse is required to receive one-half of the decedent's community and quasi-community property and a share of the separate property of the decedent equal in value to that which the spouse would have received if the decedent had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate, except as specified.



(9) Existing law authorizes the admission of a will to probate notwithstanding the prior admission of another will. Existing law provides that the subsequent will may not affect property previously distributed, but authorizes the court to determine how this will affect property not yet distributed and the provisions of the other will.

This bill would prohibit the proponent of the subsequent will from petitioning to admit the will after specified conditions are met.

(10) Existing law provides that a person who is appointed a personal representative is not liable for any otherwise proper act done in good faith if the order of appointment is reversed on appeal.

This bill would delete this provision.

(11) Existing law imposes a duty upon a trustee to keep the beneficiaries of a trust reasonably informed and requires a trustee to provide, upon request, a beneficiary with a report of prescribed information regarding the trust, trustee, and administration of the trust.

This bill would require a trustee to provide other specified information regarding certain events in connection with an irrevocable trust or irrevocable portion of a trust, as specified, and would prohibit a person who receives a notice pursuant to these provisions from bringing an action to contest the trust after a specified period of time.

(12) Existing law prohibits donative transfers to prescribed persons, except as specified.

This bill would extend the applicability of this prohibition to donative transfers to care custodians of a dependent adult, as defined.

(13) Existing law prohibits the disclosure of confidential information regarding applicants and recipients of public assistance benefits, with certain exceptions.

This bill would revise these provisions to, among other things, provide that an adult protective services employee or ombudsman is authorized to truthfully answer specified questions in the context of a proceeding for the appointment of a conservator for a prescribed person or in the context of a criminal prosecution, as specified.

(14) Existing law defines “fiduciary abuse,” as specified.

This bill would revise this definition to include a prescribed situation.

(15) This bill would also make various technical and clarifying changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 641 of the Code of Civil Procedure is amended to read:

641. A party may object to the appointment of any person as referee, on one or more of the following grounds:

(a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.

(b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.

(c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.

(d) Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

(e) Interest on the part of such person in the event of the action, or in the main question involved in the action.

(f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.

(g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

SEC. 2. Section 39 of the Probate Code is amended to read:

39. “Fiduciary” means personal representative, trustee, guardian, conservator, attorney-in-fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act (Part 9 (commencing with Section 3900) of Division 4), or other legal representative subject to this code.

SEC. 3. Section 250 of the Probate Code is amended to read:

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent’s quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Part 5 (commencing with Section 5700) of Division 5.

(5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.

(2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section 1389.4 of the Civil Code does not apply.

(3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.

SEC. 4. Section 1000 of the Probate Code is amended to read:

1000. Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings, apply to, and constitute the rules of practice in, proceedings under this code. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.

SEC. 5. Section 1060 of the Probate Code is amended to read:

1060. This chapter governs all accounts to be filed with the court. Except as specifically provided elsewhere in this code, or unless good cause is shown therefore, no information in addition to that required in this chapter need be in an account.

SEC. 6. Section 1061 of the Probate Code is amended to read:

1061. (a) All accounts shall state the period covered by the account and contain a summary showing all of the following, to the extent applicable:

(1) The property on hand at the beginning of the period covered by the account, which shall be the value of the property initially received by the fiduciary if this is the first account, and shall be the property on hand at the end of the prior account if this is a subsequent account.

(2) The value of any assets received during the period of the accounting which are not assets on hand as of the commencement of the administration of an estate.

(3) The amount of any receipts of income or principal, excluding items listed under paragraphs (1) and (2) or receipts from a trade or business.

(4) Net income from a trade or business.

(5) Gains on sales.

(6) The amount of disbursements, excluding disbursements for a trade or business or distributions.

(7) Loss on sales.

(8) Net loss from trade or business.

(9) Distributions to beneficiaries, the ward or conservatee.

(10) Property on hand at the end of the accounting period, stated at its carry value.

(b) The summary shall be in a format substantially the same as the following, except that inapplicable categories need not be shown:

## SUMMARY OF ACCOUNT

## CHARGES:

Property on hand at beginning of account (or Inventories)	\$ _____
Additional property received (or Supplemental Inventories)	_____
Receipts (Schedule ____)	_____
Gains on Sale or Other Disposition (Schedule ____)	_____
Net income from trade or business (Schedule ____)	_____
 Total Charges:	 \$ _____

## CREDITS:

Disbursements (Schedule ____)	\$ _____
Losses on Sale or Other Disposition (Schedule ____)	_____
Net loss from trade or business (Schedule ____)	_____
Distributions (Schedule ____)	_____
Property on hand at close of account (Schedule ____)	_____
 Total Credits:	 \$ _____

(c) Total charges shall equal total credits.

(d) For purposes of this section, the terms “net income” and “net loss” shall be utilized in accordance with general accounting principles. Nothing in this section is intended to require that the preparation of the summary must include “net income” and “net loss” as reflected in the tax returns governing the period of the account.

SEC. 7. Section 1063 of the Probate Code is amended to read:

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held

business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) If there were purchases or other changes in the form of assets occurring during the period of the account, there shall be a schedule showing these transactions. However, no reporting is required for transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) If an estate of a decedent or a trust will be distributed to an income beneficiary, there shall be a schedule showing an allocation of receipts and disbursements between principal and income.

(d) If there is specifically devised property, there shall be an additional schedule accounting for income, disbursements, and proceeds of sale pursuant to Sections 12002 and 16314.

(e) If any interest has been paid or is to be paid under Section 12003, 12004, 12005, or 16314, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule setting forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) If, at the end of the accounting period, there are liabilities of the estate or trust, except current or future periodic payments, including rent, salaries, utilities, or other recurring expenses, there shall be a schedule showing all of the following:

- (1) All liabilities which are a lien on estate or trust assets.
- (2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.
- (3) All notes payable.
- (4) Any judgments for which the estate or trust is liable.
- (5) Any other material liability.

SEC. 8. Section 1064 of the Probate Code is amended to read:

1064. (a) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) A description of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedule.

(2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid from the assets subject to the account to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior court order.

(4) A statement disclosing any family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during the accounting period.

(5) An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

(b) The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the code, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.

(c) For purposes of this section, “family” means a relationship created by blood or marriage. For purposes of this section, “affiliate” means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.

SEC. 9. Section 1460.1 is added to the Probate Code, to read:

1460.1. Notwithstanding any other provision of this division, no notice is required to be given to any child under the age of 12 years if the court determines either of the following:

(a) Notice was properly given to a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.

(b) The petition is brought by a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.

SEC. 10. Section 1890 of the Probate Code is amended to read:

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed



conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

SEC. 11. Part 3 (commencing with Section 1300) is added to Division 3 of the Probate Code, to read:

### PART 3. APPEALS

#### CHAPTER 1. GENERAL

1300. In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders:

- (a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.
- (b) Settling an account of a fiduciary.
- (c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.
- (d) Directing or allowing payment of a debt, claim, or cost.
- (e) Fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.
- (f) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.
- (g) Surcharging, removing, or discharging a fiduciary.
- (h) Transferring the property of the estate to a fiduciary in another jurisdiction.
- (i) Allowing or denying a petition of the fiduciary to resign.
- (j) Discharging a surety on the bond of a fiduciary.

1301. With respect to guardianships, conservatorships, and other protective proceedings, the grant or refusal to grant the following orders is appealable:

- (a) Granting or revoking of letters of guardianship or conservatorship, except letters of temporary guardianship or temporary conservatorship.
- (b) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.
- (c) Directing, authorizing, approving, or modifying payments, whether for support, maintenance, or education of the ward or conservatee or for a person legally entitled to support, maintenance, or education from the ward or conservatee.
- (d) Granting or denying a petition under Section 2423 or under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(e) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4.

(f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Article 6 (commencing with Section 2520) of Chapter 6 of Part 4 of Division 4.

(g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4.

1302. With respect to a power of attorney, the grant or refusal to grant the following orders is appealable:

(a) Any final order under Section 4941, except an order pursuant to subdivision (c) of Section 4941.

(b) Any final order under Section 4942, except an order pursuant to subdivision (c) of Section 4942.

(c) An order dismissing the petition or denying a motion to dismiss under Section 4944.

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.

(g) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(h) Directing distribution of property.

(i) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(j) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

(k) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

(l) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

1304. With respect to a trust, the grant or denial of the following orders is appealable:

(a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, except the following:

(1) Compelling the trustee to submit an account or report acts as trustee.

(2) Accepting the resignation of the trustee.

(b) Any final order under Chapter 2 (commencing with Section 19020) of Part 8 of Division 9.

(c) Any final order under Part 1 (commencing with Section 20100) and Part 2 (commencing with Section 20200) of Division 10.

(d) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

#### CHAPTER 2. EFFECT OF AN APPEAL

1310. (a) Except as provided in subdivisions (b), (c), and (d), an appeal pursuant to Chapter 1 stays the operation and effect of the judgment or order.

(b) Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or special administrator, to exercise the powers, from time to time, as if no appeal were pending. All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions.

(c) In proceedings for guardianship of the person, Section 917.7 of the Code of Civil Procedure shall apply.

(d) An appeal shall not stay the operation and effect of the order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

1311. If an order appointing a fiduciary is reversed on appeal for error, all acts of the fiduciary performed after issuance of letters and prior to the reversal are as valid as though the order were affirmed and the person appointed is not liable for any otherwise proper act done in good faith before the reversal, nor is any transaction void by reason of the reversal if entered into with a third person dealing in good faith and for value.

1312. Notwithstanding the repeal of former Section 1297 by Chapter 1199 of the Statutes of 1988, an appeal may be taken from an order or the refusal to make an order fixing an inheritance tax or determining that none is due.

SEC. 12. Section 2312 of the Probate Code is repealed.

SEC. 13. Section 2356.5 of the Probate Code is amended to read:

2356.5. (a) The Legislature hereby finds and declares:

(1) That people with dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders,” should have a conservatorship to serve their unique and special needs.

(2) That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county

government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in this section.

(b) Notwithstanding any other provision of law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other provision of law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.



(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section shall be governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing dementia.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do one of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has dementia.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.

(l) (1) Until such time as the conservatorship becomes subject to review pursuant to Section 1850, this section shall not apply to a conservatorship established on or before the effective date of the adoption of Judicial Council forms that reflect the procedures authorized by this section, or January 1, 1998, whichever occurs first.

(2) Upon the adoption of Judicial Council forms that reflect the procedures authorized by this section or January 1, 1998, whichever occurs first, this section shall apply to any conservatorships established after that date.

SEC. 14. Section 3024 of the Probate Code is repealed.

SEC. 15. Chapter 11 (commencing with Section 2750) of Part 4 of Division 4 of the Probate Code is repealed.

SEC. 16. Section 4948 of the Probate Code is repealed.

SEC. 17. Chapter 5 (commencing with Section 6560) of Division 6 of the Probate Code is repealed.

SEC. 18. Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7 of the Probate Code is repealed.

SEC. 19. Section 8226 of the Probate Code is amended to read:

8226. (a) If no person contests the validity of a will or petitions for revocation of probate of the will within the time provided in this chapter, admission of the will to probate is conclusive, subject to Section 8007.

(b) Subject to subdivision (c), a will may be admitted to probate notwithstanding prior admission to probate of another will or prior distribution of property in the proceeding. The will may not affect property previously distributed, but the court may determine how any provision of the will affects property not yet distributed and how any provision of the will affects provisions of another will.

(c) If the proponent of a will has received notice of a petition for probate or a petition for letters of administration for a general personal representative, the proponent of the will may petition for probate of the will only within the later of either of the following time periods:

(1) One hundred twenty days after issuance of the order admitting the first will to probate or determining the decedent to be intestate.



(2) Sixty days after the proponent of the will first obtains knowledge of the will.

SEC. 20. Section 8406 of the Probate Code is repealed.

SEC. 21. Section 16060.5 is added to the Probate Code, to read:

16060.5. As used in this article, the “terms of the trust” shall include the written trust instrument of an irrevocable trust or those provisions of a written trust instrument that describe or affect an irrevocable portion of a trust, including, but not limited to, signatures, amendments, disclaimers, and any directions or instructions to the trustee that affect the administration or disposition of the trust.

SEC. 22. Section 16061.5 is added to the Probate Code, to read:

16061.5. (a) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trustor for any other reason, the trustee shall provide a true and complete copy of the terms of the irrevocable trust, or irrevocable portion of the trust, to any beneficiary of the trust who requests it and to any heir of a deceased settlor who requests it.

(b) The trustee shall, for purposes of this section, rely upon any final judicial determination of heirship. However, the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship.

SEC. 23. Section 16061.7 is added to the Probate Code, to read:

16061.7. (a) A trustee shall serve a notification by the trustee described in this section in either of the following cases:

(1) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust or for any other reason.

(2) When there is a change of trustees of an irrevocable trust.

(b) The notification by trustee required by subdivision (a) shall be served on each of the following:

(1) Each beneficiary of the irrevocable trust or irrevocable portion of the trust, subject to the limitations of Section 15804.

(2) If the event that requires trustee notification is the death of a settlor, to each heir of the deceased settlor.

(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General.

(4) The trustee need not provide a copy of the notification by trustee to any beneficiary or heir the existence of whom is (A) known to the trustee but who cannot be located by the trustee after reasonable diligence, or (B) unknown to the trustee.

(c) The notification by trustee shall be served by mail to the last known address, pursuant to Section 1215, or by personal delivery.

(d) The notification by trustee shall be served not later than 60 days following the occurrence of the event requiring service of the notification by trustee, or 60 days following the trustee’s becoming

aware of the existence of a person entitled to receive notification by trustee, if that person was not known to the trustee on the occurrence of the event requiring service of the notification by trustee. If there is a vacancy in the office of the trustee on the date of the occurrence of the event requiring service of the notification by trustee, or if that event causes a vacancy, then the 60-day period for service of the notification by trustee commences on the date the new trustee commences to serve as trustee.

(e) The notification by trustee shall contain the following information:

(1) The identity of the settlor or settlors of the trust and the date of execution of the trust instrument.

(2) The name, mailing address and telephone number of each trustee of the trust.

(3) The address of the physical location where the principal place of administration of the trust is located, pursuant to Section 17002.

(4) Any additional information that may be required by the terms of the trust instrument.

(5) A notification that the recipient is entitled, upon reasonable request to the trustee, to receive from the trustee a true and complete copy of the terms of the trust.

(6) A warning, set out in a separate paragraph in not less than 10-point boldfaced type, or a reasonable equivalent thereof, that states as follows:

“You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to you in response to your request during that 120-day period, whichever is later.”

(f) A trustee who fails to serve the notification by trustee as required by this section shall be responsible for all damages, including attorney’s fees and costs, caused by the failure; provided, however, that this subdivision shall not apply in any case where a trustee makes a good faith effort to comply with this section. A trustee shall, for purposes of this section, rely upon any final judicial determination of heirship; but the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship known to the trustee.

(g) Any waiver by a settlor of the requirement of serving the notification by trustee required by this section is against public policy and shall be void.

(h) A trustee may serve a notification by trustee in the form required by this section on any person or persons in addition to those on whom the notice is required to be served. A trustee is not liable to any person for serving or for not serving the notice on any person in addition to those on whom the notice is required to be served.





SEC. 24. Section 16061.8 is added to the Probate Code, to read:

16061.8. No person who receives the notification by the trustee pursuant to this chapter may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to him or her in response to his or her request during that 120-day period, whichever is later.

SEC. 25. Section 16063 of the Probate Code is repealed.

SEC. 26. Section 16063 is added to the Probate Code, to read:

16063. (a) An account furnished pursuant to Section 16062 shall contain the following information:

(1) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

(2) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or as of the end of the period covered by the account.

(3) The trustee's compensation for the last complete fiscal year of the trust or since the last account.

(4) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the last complete fiscal year of the trust or since the last account.

(5) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain a court review of the account and of the acts of the trustee.

(6) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

(b) All accounts filed to be approved by a court shall be presented in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

SEC. 27. Section 17200 of the Probate Code is amended to read:

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

SEC. 28. Section 17203 of the Probate Code is amended to read:

17203. (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons:

(1) All trustees.

(2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3.

(3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General.

(b) At least 30 days before the time set for hearing on the petition, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any person, other than a trustee or beneficiary, whose right, title, or interest would be affected by the petition and who does not receive notice pursuant to subdivision (a). The court may not shorten the time for giving notice under this subdivision.

(c) If a person to whom notice otherwise would be given has been deceased for at least 40 days, and no personal representative has been appointed for the estate of that person, and the deceased person's right, title, or interest has not passed to any other person pursuant to Division 8 (commencing with Section 13000) or otherwise, notice may instead be given to the following persons:

(1) Each heir and devisee of the decedent, and all persons named as executors of the will of the decedent, so far as known to the petitioner.

(2) Each person serving as guardian or conservator of the decedent at the time of the decedent's death, so far as known to the petitioner.

SEC. 29. Section 17207 of the Probate Code is repealed.

SEC. 30. Section 19028 of the Probate Code is repealed.

SEC. 31. Section 20123 of the Probate Code is amended to read:

20123. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the personal representative to charge the prorated amounts against the persons against whom an estate tax has been prorated insofar as the personal representative is in possession of any property or interests of the persons against whom the charge may be made.

(2) Summarily directing all other persons against whom an estate tax has been prorated to make payment of the prorated amounts to the personal representative.

(b) A court order made under this section is a judgment that may be enforced against the persons against whom an estate tax has been prorated.

SEC. 32. Section 20223 of the Probate Code is amended to read:

20223. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the trustee to charge the prorated amounts against the transferees against whom the generation-skipping transfer tax has been prorated insofar as the trustee is in possession of any property or interests of the transferees against whom the charge may be made.

(2) Summarily directing all other transferees against whom the generation-skipping transfer tax has been prorated to make payment of the prorated amounts to the trustee.

(b) A court order made under this section is a judgment that may be enforced against the persons against whom a generation-skipping transfer tax has been prorated.

SEC. 33. Section 21350 of the Probate Code is amended to read:

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of any such law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(6) A care custodian of a dependent adult.

(b) For purposes of this section, “a person who is related by blood or marriage” to a person means all of the following:

(1) The person’s spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person’s spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

(c) For purposes of this section, the term “dependent adult” has the meaning set forth in Section 15610.23 of Welfare and Institutions Code and also includes those persons who (1) are older than age 64 and (2) would be dependent adults, within the meaning of Section 15610.23, if they were between the ages of 18 and 64. The term “care custodian” has the meaning set forth in Section 15610.17 of Welfare and Institutions Code.

SEC. 34. Part 6 (commencing with Section 21600) is added to Division 11 of the Probate Code, to read:

PART 6. FAMILY PROTECTION: OMITTED SPOUSES AND  
CHILDREN

CHAPTER 1. GENERAL PROVISIONS

21600. This part shall apply to property passing by will through a decedent's estate or by a trust, as defined in Section 82, that becomes irrevocable only on the death of the settlor.

21601. (a) For purposes of this part, "decedent's testamentary instruments" means the decedent's will or revocable trust.

(b) "Estate" as used in this part shall include a decedent's probate estate and all property held in any revocable trust that becomes irrevocable on the death of the decedent.

CHAPTER 2. OMITTED SPOUSES

21610. Except as provided in Section 21611, if a decedent fails to provide in a testamentary instrument for the decedent's surviving spouse who married the decedent after the execution of all of the decedent's testamentary instruments, the omitted spouse shall receive a share in the decedent's estate, consisting of the following property in said estate:

(a) The one-half of the community property that belongs to the decedent under Section 100.

(b) The one-half of the quasi-community property that belongs to the decedent under Section 101.

(c) A share of the separate property of the decedent equal in value to that which the spouse would have received if the decedent had died without having executed a testamentary instrument, but in no event is the share to be more than one-half the value of the separate property in the estate.

21611. The spouse shall not receive a share of the estate under Section 21610 if any of the following is established:

(a) The decedent's failure to provide for the spouse in the decedent's testamentary instruments was intentional and that intention appears from the testamentary instruments.

(b) The decedent provided for the spouse by transfer outside of the estate passing by the decedent's testamentary instruments and the intention that the transfer be in lieu of a provision in said instruments is shown by statements of the decedent or from the amount of the transfer or by other evidence.

(c) The spouse made a valid agreement waiving the right to share in the decedent's estate.

26112. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. This value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

### CHAPTER 3. OMITTED CHILDREN

21620. Except as provided in Section 21621, if a decedent fails to provide in a testamentary instrument for a child of decedent born or adopted after the execution of all of the decedent's testamentary instruments, the omitted child shall receive a share in the decedent's estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instrument.

21621. A child shall not receive a share of the estate under Section 21620 if any of the following is established:

(a) The decedent's failure to provide for the child in the decedent's testamentary instruments was intentional and that intention appears from the testamentary instruments.

(b) The decedent had one or more children and devised or otherwise directed the disposition of substantially all the estate to the other parent of the omitted child.

(c) The decedent provided for the child by transfer outside of the estate passing by the decedent's testamentary instruments and the intention that the transfer be in lieu of a provision in said instruments is shown by statements of the decedent or from the amount of the transfer or by other evidence.

21622. If, at the time of the execution of all of decedent's testamentary instruments effective at the time of decedent's death, the decedent failed to provide for a living child solely because the decedent believed the child to be dead or was unaware of the birth of the child, the child shall receive a share in the estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instruments.

21623. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's



testamentary instruments in proportion to the value they may respectively receive. This value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision of a testamentary instrument may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

#### CHAPTER 4. APPLICABILITY

21630. This part does not apply if the decedent died before January 1, 1998. The law applicable prior to January 1, 1998, applies if the decedent died before January 1, 1998.

SEC. 35. Section 10850 of the Welfare and Institutions Code is amended to read:

10850. (a) Except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information which identifies by name or address any applicant for or recipient of these grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and these lists or any other records shall be released when requested by any county welfare department or the State Department of Social Services. These lists or other records shall only be used for purposes directly connected with the administration of public social services. Except for those purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.

Any county welfare department and the State Department of Social Services shall provide any governmental entity which is authorized by law to conduct an audit or similar activity in



connection with the administration of public social services, including any committee or legislative body so authorized, with access to any public social service applications and records described in subdivision (a) to the extent of the authorization. Those committees, legislative bodies and other entities may only request or use these records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of public social services.

However, this section shall not prohibit the furnishing of this information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating this subdivision is guilty of a misdemeanor.

Further, in the context of a petition for the appointment of a conservator for a person who is receiving or has received aid from a public agency, as indicated above, or in the context of a criminal prosecution for a violation of Section 368 of the Penal Code both of the following shall apply:

(1) An Adult Protective Services employee or Ombudsman may answer truthfully at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the Adult Protective Services employee or Ombudsman states that he or she is aware of such information, the court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose all relevant agency records.

(2) The court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the Adult Protective Services employee or Ombudsman has information that would facilitate the resolution of the matter.

(c) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political





subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that the research will not result in the disclosure of the identity of applicants for or recipients of public social services.

(d) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(e) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by the applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker. These criminal acts shall include only those which are in violation of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's or recipient's name, physical description, and address.

(f) The provisions of this section shall be operative only to the extent permitted by federal law and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled "Basic Health Care", and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.

SEC. 36. Section 14100.2 of the Welfare and Institutions Code is amended to read:

14100.2. (a) All types of information, whether written or oral, concerning a person, made or kept by any public officer or agency in connection with the administration of any provision of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.7

(commencing with Section 14520) and for which a grant-in-aid is received by this state from the United States government pursuant to Title XIX of the Social Security Act shall be confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program. However, in the context of a petition for the appointment of a conservator for a person with respect to whom such information is made or kept, and in the context of a criminal prosecution for a violation of Section 368 of Penal Code with respect to such a person, all of the following shall apply:

A public officer or employee of any such agency may answer truthfully, at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the officer or employee states that he or she is aware of this information, the court may order the officer or employee to testify about his or her observations and to disclose any relevant agency records if the court has an other independent reason to believe that the officer or employee has information that would facilitate the resolution of the matter.

(b) Except as provided in this section and to the extent permitted by federal law or regulation all information about applicants and recipients as provided for in subdivision (a) to be safeguarded includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(c) Purposes directly connected with the administration of the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) encompass those administrative activities and responsibilities in which the State Department of Health Services and its agents are required to engage to insure effective program operations. These activities include, but are not limited to: establishing eligibility and methods of reimbursement; determining the amount of medical assistance; providing services for recipients; conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medi-Cal program; and conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal program.

(d) Any officer, agent, or employee of the State Department of Health Services or of any public agency shall provide the Joint Legislative Audit Committee and the Auditor General with any and all the information described in subdivision (b) within a reasonable period of time as determined by the committee in consultation with the State Department of Health Services, after receipt of a request from the committee approved by a majority of the members of the

committee. The Joint Legislative Audit Committee and the Auditor General may use such information only for the purpose of investigating or auditing the administration of the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520), and shall not use such information for commercial or political purposes. In any case where disclosure of information is authorized by this section, the Joint Legislative Audit Committee or the Auditor General shall not disclose the identity of any applicant or recipient, except in the case of a criminal or civil proceeding conducted in connection with the administration of the Medi-Cal program.

(e) The access to information provided in subdivision (d) shall be permitted only to the extent and under the conditions provided by federal law and regulations governing the release of such information.

(f) The State Department of Health Services may make rules and regulations governing the custody, use and preservation of all records, papers, files and communications pertaining to the administration of the laws relating to the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520). The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing such services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that such research will not result in the disclosure of the identity of applicants for or recipients of such services.

(g) Upon request, the department shall release to the negotiator established pursuant to Article 2.6 (commencing with Section 14081) all computer tapes and any modifications thereto, including paid claims, connected with the administration of the Medi-Cal program which are in the possession or under the control of the department, including tapes prepared prior to the effective date of this section.

To ensure compliance with federal law and regulations, the department shall make the minimum necessary modifications to its computer tapes prior to releasing the tapes to the negotiator in order to assure the confidentiality of the identity of all applicants for, or recipients of, those services. The department shall not make any modifications to paid claims tapes which affect information regarding beneficiaries' aid categories or counties of origin.

(h) Any person who knowingly releases or possesses confidential information concerning persons who have applied for or who have been granted any form of Medi-Cal benefits or benefits under

Chapter 8 (commencing with Section 14200) or Chapter 8.7 (commencing with Section 14520) for which state or federal funds are made available in violation of this section is guilty of a misdemeanor.

SEC. 37. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) “Fiduciary abuse” means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or for any purpose not in the due and lawful execution of his or her trust.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the elder or dependent adult, or the elder or dependent adult’s representative, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term “third party” means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.



(c) For the purposes of this section, the term “representative” means an elder or dependent adult’s conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.

SEC. 38. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney’s fees and costs. The term “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by Section 337.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney’s fees permitted under this section may be imposed against an employer.

